

1 KAMALA D. HARRIS
Attorney General of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 State Bar No. 101336
AMANDA DODDS
4 Senior Legal Analyst
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2141
7 Facsimile: (619) 645-2061
Attorneys for Complainant

8
9 **BEFORE THE**
BOARD OF REGISTERED NURSING
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Statement of Issues
Against:

Case No. *2011-938*

13 **ANTHONY HOWARD BROWN**
14 **605 West Dunton Avenue**
15 **Orange, CA 92865**

STATEMENT OF ISSUES

16 Respondent.

17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Statement of Issues solely in
20 her official capacity as the Executive Officer of the Board of Registered Nursing, Department of
21 Consumer Affairs.

22 2. On or about December 14, 2010, the Board of Registered Nursing, Department of
23 Consumer Affairs received an application for a Registered Nurse License from Anthony Howard
24 Brown (Respondent). On or about December 7, 2010, Anthony Howard Brown certified under
25 penalty of perjury to the truthfulness of all statements, answers, and representations in the
26 application. The Board denied the application on February 14, 2011.

27 ///

28 ///

JURISDICTION

3. This Statement of Issues is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2736 of the Code provides, in pertinent part, that the Board may deny a license when it finds that the applicant has committed any acts constituting grounds for denial of licensure under section 480 of that Code.

STATUTORY PROVISIONS

5. Section 475 of the Code states:

(a) Notwithstanding any other provisions of this code, the provisions of this division shall govern the denial of licenses on the grounds of:

(1) Knowingly making a false statement of material fact, or knowingly omitting to state a material fact, in an application for a license.

(2) Conviction of a crime.

(3) Commission of any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another.

(4) Commission of any act which, if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license. . . .

6. Section 480 of the Code states:

(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another.

(3) (A) Done any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

(B) The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions, or duties of the business or profession for which application is made. . . .

1 7. Section 482 of the Code states:

2 Each board under the provisions of this code shall develop criteria to evaluate
3 the rehabilitation of a person when:

4 (a) Considering the denial of a license by the board under Section 480; or

5 (b) Considering suspension or revocation of a license under Section 490.

6 Each board shall take into account all competent evidence of rehabilitation
7 furnished by the applicant or licensee.

8 8. Section 2761 of the Code states:

9 The board may take disciplinary action against a certified or licensed nurse or
10 deny an application for a certificate or license for any of the following:

11 (a) Unprofessional conduct, which includes, but is not limited to, the
12 following:

13

14 (f) Conviction of a felony or of any offense substantially related to the
15 qualifications, functions, and duties of a registered nurse, in which event the record of
16 the conviction shall be conclusive evidence thereof. . . .

17 9. Section 2762 of the Code states:

18 In addition to other acts constituting unprofessional conduct within the meaning
19 of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person
20 licensed under this chapter to do any of the following:

21 (a) Obtain or possess in violation of law, or prescribe, or except as directed by
22 a licensed physician and surgeon, dentist, or podiatrist administer to himself or
23 himself, or furnish or administer to another, any controlled substance as defined in
24 Division 10 (commencing with Section 11000) of the Health and Safety Code or any
25 dangerous drug or dangerous device as defined in Section 4022.

26 (b) Use any controlled substance as defined in Division 10 (commencing with
27 Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous
28 device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner
dangerous or injurious to himself or herself, any other person, or the public or to the
extent that such use impairs his or her ability to conduct with safety to the public the
practice authorized by his or her license.

(c) Be convicted of a criminal offense involving the prescription, consumption,
or self-administration of any of the substances described in subdivisions (a) and (b) of
this section, or the possession of, or falsification of a record pertaining to, the
substances described in subdivision (a) of this section, in which event the record of
the conviction is conclusive evidence thereof. . . .

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

REGULATORY PROVISIONS

10. California Code of Regulations, title 16, section 1444 states:

A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare. Such convictions or acts shall include but not be limited to the following:

(a) Assaultive or abusive conduct including, but not limited to, those violations listed in subdivision (d) of Penal Code Section 11160.

(b) Failure to comply with any mandatory reporting requirements.

(c) Theft, dishonesty, fraud, or deceit.

(d) Any conviction or act subject to an order of registration pursuant to Section 290 of the Penal Code.

11. California Code of Regulations, title 16, section 1445 states:

(a) When considering the denial of a license under Section 480 of the code, the board, in evaluating the rehabilitation of the applicant and his/her present eligibility for a license will consider the following criteria:

(1) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.

(2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial under Section 480 of the code.

(3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).

(4) The extent to which the applicant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant.

(5) Evidence, if any, of rehabilitation submitted by the applicant. . . .

FIRST CAUSE FOR DENIAL OF APPLICATION

(August 25, 1992 Criminal Conviction for Battery)

12. Respondent's application is subject to denial under section 480, subdivisions (a)(1) and (a)(3)(A) of the Code in that he was convicted of a crime that is substantially related to the qualifications, duties, and functions of a registered nurse, and the conviction could be grounds for discipline against a registered nurse license under section 2761, subdivision (f) of the Code. The circumstances are as follows:

1 a. On or about August 25, 1992, in a criminal proceeding entitled *People of*
2 *the State of California v. Anthony Howard Brown*, in Orange County Municipal Court, case
3 number 92M04922, Respondent was convicted on his plea of guilty to violating Penal Code
4 section 242, battery, a misdemeanor.

5 b. As a result of the conviction, on or about August 25, 1992, Respondent was
6 sentenced to 36 months summary probation and ordered to serve 90 days in jail, plus payment of
7 restitution. On July 2, 2009, the court granted Respondent's Petition for Relief and the conviction
8 was dismissed pursuant to the provisions of Penal Code section 1203.4.

9 **SECOND CAUSE FOR DENIAL OF APPLICATION**

10 **(September 18, 1992 Criminal Conviction for Assault & Battery)**

11 13. Respondent's application is subject to denial under section 480, subdivisions (a)(1)
12 and (a)(3)(A) of the Code in that he was convicted of crimes that are substantially related to the
13 qualifications, duties, and functions of a registered nurse, and the conviction could be grounds for
14 discipline against a registered nurse license under section 2761, subdivision (f) of the Code. The
15 circumstances are as follows:

16 a. On or about September 18, 1992, in a criminal proceeding entitled *People*
17 *of the State of California v. Anthony Howard Brown*, in Orange County Municipal Court, case
18 number 92CM11555, Respondent was convicted on his plea of guilty to violating Penal Code
19 section 240, assault, and Penal Code section 242, battery, misdemeanors.

20 b. As a result of the convictions, on or about September 18, 1992, Respondent
21 was sentenced to serve 45 days in jail, consecutive to the sentence imposed in case number
22 92M04922, referenced in paragraph 12, above.

23 **THIRD CAUSE FOR DENIAL OF APPLICATION**

24 **(November 6, 1992 Criminal Convictions for Sale/Transport of Controlled Substance,**
25 **Possession of Controlled Substance, et al. on July 18, 1992)**

26 14. Respondent's application is subject to denial under section 480, subdivisions (a)(1)
27 and (a)(3)(A) of the Code in that he was convicted of crimes that are substantially related to the
28 qualifications, duties, and functions of a registered nurse, and would be grounds for suspension or

1 revocation of a registered nurse license pursuant to sections 2761, subdivision (f), and 2762,
2 subdivisions (a) and (c). The circumstances are as follows:

3 a. On or about November 6, 1992, in a criminal proceeding entitled *People of*
4 *the State of California v. Anthony Howard Brown*, in Orange County Superior Court, case
5 number C-94837, Respondent was convicted on his plea of guilty to violating Health and Safety
6 Code sections 11379, subdivision (a), sale or transport of controlled substance; 11378, possession
7 of controlled substance with intent to sell; 11377, subdivision (a), possession of a controlled
8 substance; and Penal Code section 12020, subdivision (a), the possession/ manufacture/sell of a
9 deadly weapon, felonies. The court found true as to each felony count that Respondent
10 committed the offenses before the judgment was issued on a prior felony conviction.

11 b. As a result of the convictions, on or about November 6, 1992, Respondent
12 was sentenced to serve a total of 16 months in state prison to run concurrent with the sentence
13 imposed in case number 93HF0201, referenced in paragraph 18, below.

14 **FOURTH CAUSE FOR DENIAL OF APPLICATION**

15 **(November 24, 1992 Criminal Conviction for Possession of Controlled Substance)**

16 15. Respondent's application is subject to denial under section 480, subdivisions (a)(1)
17 and (a)(3)(A) of the Code in that he was convicted of a crime that is substantially related to the
18 qualifications, duties, and functions of a registered nurse, and would be grounds for suspension or
19 revocation of a registered nurse license pursuant to sections 2761, subdivision (f), and 2762,
20 subdivisions (a) and (c). The circumstances are as follows:

21 a. On or about November 24, 1992, in a criminal proceeding entitled *People*
22 *of the State of California v. Anthony Howard Brown*, in Orange County Municipal Court, case
23 number 92CF00916, Respondent was convicted on his plea of guilty to violating Health and
24 Safety Code section 11377, subdivision (a), possession of a controlled substance, a felony.

25 b. As a result of the conviction, on or about November 24, 1992, Respondent
26 was sentenced to 36 months probation, and ordered to serve 24 days in jail.

27 ///

28 ///

1 **FIFTH CAUSE FOR DENIAL OF APPLICATION**

2 **(March 18, 1993 Criminal Conviction for Possession of Controlled Substance**

3 **With Intent to Sell on March 4, 1993)**

4 16. Respondent's application is subject to denial under section 480, subdivisions (a)(1)
5 and (a)(3)(A) of the Code in that he was convicted of a crime that is substantially related to the
6 qualifications, duties, and functions of a registered nurse, and would be grounds for suspension or
7 revocation of a registered nurse license pursuant to sections 2761, subdivision (f), and 2762,
8 subdivisions (a) and (c). The circumstances are as follows:

9 a. On or about March 18, 1993, in a criminal proceeding entitled *People of*
10 *the State of California v. Anthony Howard Brown*, in Orange County Municipal Court, case
11 number 93HF0201, Respondent was convicted on his plea of guilty to violating Health and Safety
12 Code section 11378, possession of a controlled substance with intent to sell, a felony.

13 b. As a result of the conviction, on or about March 18, 1993, Respondent was
14 sentenced to serve 16 months in state prison, to run concurrent with the sentence imposed in case
15 number C-94837, paragraph 16, above.

16 **SIXTH CAUSE FOR DENIAL OF APPLICATION**

17 **(March 1, 1994 Criminal Conviction for Use/Under the Influence of a Controlled Substance**

18 **& Assault on a Custodial Officer)**

19 17. Respondent's application is subject to denial under section 480, subdivision (a)(1)
20 and (a)(3)(A) of the Code in that he was convicted of crimes that are substantially related to the
21 qualifications, duties, and functions of a registered nurse, and would be grounds for suspension or
22 revocation of a registered nurse license pursuant to sections 2761, subdivision (f), and 2762,
23 subdivisions (b) and (c). The circumstances are as follows:

24 a. On or about March 1, 1994, in a criminal proceeding entitled *People of the*
25 *State of California v. Anthony Howard Brown*, in Orange County Municipal Court, case number
26 94M00754, Respondent was convicted on his plea of guilty to violating Health and Safety Code
27 section 11550, subdivision (a), under the influence of a controlled substance; and Penal Code
28 section 241.1, assault on a custodial officer, misdemeanors.

1 b. As a result of the convictions, on or about March 1, 1994, Respondent was
2 sentenced to serve 360 days in jail, and 16 months in state prison, to run concurrent with the
3 sentence imposed in case number C-94837, referenced in paragraph 16, above. On July 2, 2009,
4 the court granted Respondent's Petition for Relief and the conviction was dismissed pursuant to
5 the provisions of Penal Code section 1203.4.

6 **SEVENTH CAUSE FOR DENIAL OF APPLICATION**

7 **(June 16, 1995 Criminal Conviction for**

8 **Possession of a Controlled Substance on April 9, 1995)**

9 18. Respondent's application is subject to denial under section 480, subdivisions (a)(1)
10 and (a)(3)(A) of the Code in that he was convicted of a crime that is substantially related to the
11 qualifications, duties, and functions of a registered nurse, and would be grounds for suspension or
12 revocation of a registered nurse license pursuant to sections 2761, subdivision (f), and 2762,
13 subdivisions (a) and (c). The circumstances are as follows:

14 a. On or about June 16, 1995, in a criminal proceeding entitled *People of the*
15 *State of California v. Anthony Howard Brown*, in Orange County Superior Court, case number
16 95HF0325, Respondent was convicted on his plea of guilty to violating Health and Safety Code
17 section 11377, subdivision (a), possession of a controlled substance, a felony.

18 b. As a result of the conviction, on or about June 16, 1995, Respondent was
19 sentenced to the low term of 16 months in state prison.

20 **EIGHTH CAUSE FOR DENIAL OF APPLICATION**

21 **(July 12, 1996 Criminal Conviction for Under the Influence of a Controlled Substance)**

22 19. Respondent's application is subject to denial under section 480, subdivisions (a)(1)
23 and (a)(3)(A) of the Code in that he was convicted of a crime that is substantially related to the
24 qualifications, duties, and functions of a registered nurse, and would be grounds for suspension or
25 revocation of a registered nurse license pursuant to sections 2761, subdivision (f), and 2762,
26 subdivisions (b) and (c). The circumstances are as follows:

27 a. On or about July 12, 1996, in a criminal proceeding entitled *People of the*
28 *State of California v. Anthony Howard Brown*, in Orange County Municipal Court, case number

1 96HM04506, Respondent was convicted on his plea of guilty to violating Health and Safety Code
2 section 11550, subdivision (a), use/under the influence of a controlled substance, a misdemeanor.

3 b. As a result of the conviction, on or about July 16, 1996, Respondent was
4 sentenced to serve 270 days in jail. On July 2, 2009, the court granted Respondent's Petition for
5 Relief and the conviction was dismissed pursuant to the provisions of Penal Code section 1203.4.

6 **NINTH CAUSE FOR DENIAL OF APPLICATION**

7 **(May 19, 1997 Criminal Conviction for Possession of a Controlled Substance)**

8 20. Respondent's application is subject to denial under section 480, subdivisions (a)(1)
9 and (a)(3)(A) of the Code in that he was convicted of a crime that is substantially related to the
10 qualifications, duties, and functions of a registered nurse, and would be grounds for suspension or
11 revocation of a registered nurse license pursuant to sections 2761, subdivision (f), and 2762,
12 subdivisions (a) and (c). The circumstances are as follows:

13 a. On or about May 19, 1997, in a criminal proceeding entitled *People of the*
14 *State of California v. Anthony Howard Brown*, in Orange County Superior Court, case number
15 97HF0448, Respondent was convicted on his plea of guilty to violating Health and Safety Code
16 section 11377, subdivision (a), possession of a controlled substance, a felony.

17 b. As a result of the conviction, on or about May 19, 1997, Respondent was
18 sentenced to serve two years in state prison, suspended, and 90 days in jail. Respondent was
19 granted 36 months formal probation.

20 **TENTH CAUSE FOR DENIAL OF APPLICATION**

21 **(June 8, 1999 Criminal Conviction for Transport/Sell a Controlled Substance)**

22 21. Respondent's application is subject to denial under section 480, subdivisions (a)(1)
23 and (a)(3)(A) of the Code in that he was convicted of a crime that is substantially related to the
24 qualifications, duties, and functions of a registered nurse, and would be grounds for suspension or
25 revocation of a registered nurse license pursuant to sections 2761, subdivision (f), and 2762,
26 subdivisions (a) and (c). The circumstances are as follows:

27 a. On or about June 8, 1999, in a criminal proceeding entitled *People of the*
28 *State of California v. Anthony Howard Brown*, in Riverside County Superior Court, case number

1 RIF085510, Respondent was convicted on his plea of guilty to violating Health and Safety Code
2 section 11379, subdivision (a), transport/sell a controlled substance, a felony. Respondent
3 admitted and the court found true the enhancements that Respondent had previously been twice
4 convicted of the same crime. Additional counts of possession of a controlled substance and under
5 the influence of a controlled substance and prior strike enhancements were dismissed pursuant to
6 a plea agreement.

7 b. As a result of the conviction, on or about June 8, 1999, Respondent was
8 sentenced to serve a total of five years in state prison as follows: two years on the principal count
9 of transport/sell a controlled substance, and three years on one of the enhancements. Sentencing
10 on the remaining enhancement was stayed. Respondent received credit for 105 days.

11 **PRAYER**

12 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
13 and that following the hearing, the Board of Registered Nursing issue a decision:

- 14 1. Denying the application of Anthony Howard Brown for a Registered Nurse License;
15 2. Taking such other and further action as deemed necessary and proper.
16

17 DATED: 5-24-11

Louise R. Bailey
18 LOUISE R. BAILEY, M.ED., RN
19 Executive Officer
20 Board of Registered Nursing
21 Department of Consumer Affairs
22 State of California
23 Complainant
24
25
26
27
28

SD2011800174
805040069.doc